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**IN THE
COURT OF APPEALS OF INDIANA**

NEAH MARTIN,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 03A01-0703-CR-114
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT
The Honorable Stephen R. Heimann, Judge
Cause No. 03C01-0601-FC-173

July 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Neah Martin pleaded guilty to Welfare Fraud, as a Class D felony, and the trial court sentenced her to two years and three months. She now appeals claiming that the court improperly ignored mitigating circumstances when it sentenced her.

We affirm.

FACTS AND PROCEDURAL HISTORY

On January 19, 2006, the State charged Martin with welfare fraud, as a Class C felony, and Theft, as a Class D felony. The charge for welfare fraud reads:

Neah Martin, on or about and between March 2005 and November[] 2005, as Representative Payee for Tristin Martin and Desmond Martin, did knowingly or intentionally conceal information, to wit: that her children were removed from her custody, for the purpose of receiving public relief or assistance to which she was not entitled, and in doing so[,] Neah Martin received an amount in public relief or assistance that is: social Security Benefits, in an amount greater than two thousand five hundred dollars (\$2500.00)[.]

Appellant's App. at 7. On October 2, 2006, Martin pleaded guilty to the lesser-included offense of welfare fraud, as a Class D felony.

On December 18, 2006, the trial court held Martin's sentencing hearing. Martin testified, among other things, that she had continued to receive funds on behalf of her children after the children had been removed from her home. The court found no mitigating circumstances and identified two aggravators, the likelihood that Martin will re-offend and her criminal history. The court sentenced Martin to two years and three months. This appeal ensued.

DISCUSSION AND DECISION

Initially, it is unclear whether Martin committed her crimes before the Legislature amended the sentencing statutes. The State asserts that she “committed [her crime], and was charged, pled guilty, and sentenced after the new sentencing system was made effective on April 25, 2005.” Appellee’s Brief at 3. The charging information, however, says she committed her crime “between March 2005 and November[] 2005,” Appellant’s App. at 7, and Martin did not include the transcript of her guilty plea hearing. Thus, we are unable to determine if Martin and the State agreed that her crime took place after the sentencing amendments. Regardless of when her crime occurred, we review the merits of her claim.

In Anglemyer v. State, No. 43S05-0606-CR-230, __N.E.2d__, slip op. at 8-11 (Ind. June 26, 2007), our Supreme Court clarified the sentencing procedure for trial courts under the amended sentencing statutes. Under the new sentencing framework, “a trial judge may impose any sentence within the statutory range without regard to the existence of aggravating or mitigating factors.” Id. at 9. “So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion.” Id. at 10. The trial court, however, is still required to enter sentencing statements when imposing a sentence for a felony. Id. at 9. A trial court can abuse its discretion by failing to enter a sentencing statement that identifies aggravators or mitigators supported by the record. Id. It cannot, however, “be said to have abused its discretion in failing to ‘properly weigh’ such factors.” Id.

To summarize, the imposition of sentence and the review of sentences on appeal should proceed as follows:

1. The trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence.
2. The reasons given, and the omission of reasons arguably supported by the record, are reviewable on appeal for abuse of discretion.
3. The relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse.
4. Appellate review of the merits of a sentence may be sought on the grounds outlined in appellate Rule 7(B).

Id. at 11.

Martin claims that the trial court erred in sentencing her without identifying any mitigating circumstances.¹ When we review a trial court's sentencing statement, we may consider both the written sentencing statement and the court's comments at the hearing. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). Martin carries the burden of establishing that the evidence clearly supports her mitigating factors and those factors are significant. Anglemyer, __N.E.2d__, slip op. at 13. Here, in the court's writing sentencing statement, it found no mitigating circumstances and two aggravating circumstances, stating, "the character of the defendant is such that it is likely she will continue to commit crimes [and t]he defendant's lengthy criminal history." Appellant's App. at 64.

At the hearing, Martin presented evidence and testified on her own behalf. The Court questioned Martin about whether her parental rights had been terminated, Martin's application for guardianship, and her interaction with her children. Martin argued that the court should consider the following mitigators: 1) she obtained and maintained a job; 2) she had tested negative for drugs for over a year; and 3) she had made progress toward

¹ Martin does not ask us to determine whether her sentence is inappropriate under Indiana Appellate Rule 7(B).

reunification with her children. The State argued that Martin's sentence should be enhanced based on her criminal history as recounted in the presentence investigation report.² The court then stated:

The Court finds there are no mitigating circumstances. One of the questions the Court asked, which hadn't come up in this context, was whether or not her parental rights had actually been terminated as it relates to one of the minor children and they had been and she then admitted that. Her father then developed Alzheimer's and so she has been back in that child's life, but her parental rights had been terminated and yet she was still collecting financial aid from the government so [] for that child. The Court finds there are no mitigating circumstances. There are a number of aggravating circumstances including the aggravator the Court finds that the defendant's character is such that it's likely she'll continue to commit crimes. The Court notes that there was in '89 check deception. These [sic] are crimes of dishonesty. There was a deferred prosecution on that. 1990, two check deceptions [sic]. 1990 there was a criminal conversion [] arrest. 1991 there was a charge of false informing that was transferred in and ultimately dismissed. 1991 there was a forgery charge and a theft charge to which she pled guilty . . . in 1991. 1996 there was a theft and a forgery charge. She pled guilty to the theft charge. 2005 there were ten check deception charges and she pled guilty to, I don't know how many, at least one and now we have this welfare fraud and theft charges to which she has pled to the welfare. So there's a lengthy history here of crimes that are crimes of dishonesty. So, the Court finds and then there was the testimony here today wherein the Court finds the defendant was not forthcoming in her testimony and so, the Court finds that her character is such that it's likely she'll continue to commit crimes. The second aggravator then is that this is, in fact, her third felony conviction and her sixth conviction overall. So she has a lengthy criminal history. I'm going to sentence you to the Indiana Department of Correction[] for a period of two years and three months and give you credit for time served of one day.

Transcript at 33-34.

While a trial court cannot ignore mitigating factors clearly supported by the record, a sentencing court need not agree with the defendant as to the weight or value to be given to proffered mitigating facts. Sipple v. State, 788 N.E.2d 473, 480 (Ind. Ct.

² Martin's PSI is not included in the record on appeal.

App. 2003), trans. denied. Indeed, a sentencing court is under no obligation to find mitigating factors at all. Id. Nor is the court obligated to explain why it has found that the factor does not exist. Anglemyer, __N.E.2d__, slip op. at 13.

Here, the court did not expressly state that it rejected Martin's proffered mitigators. Regarding her third mitigator, the court questioned Martin about her legal status relative to her children, and it expressly found that she "was not forthcoming in her testimony." Transcript at 34. Hence, the court rejected Martin's argument that she had made progress toward reunification with her children. The court has the discretion to make that "call," and we find no error. Anglemyer, __N.E.2d__, slip op. at 14.

The court stated twice in its oral sentencing statement that it found no mitigators and repeated that statement in its written sentencing statement. Although the record does, in fact, include evidence supporting Martin's other two proffered mitigators, her employment and "clean" drug tests, the court did not directly address those mitigators. Martin does not meet her burden of showing that those mitigators were significant. Id. at 13. We will not remand this case for the court's reconsideration of those mitigators because we can "say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." Id. at 11.

Further, a single aggravator may support the enhancement of a sentence. Supple, 788 N.E.2d at 480. Martin does not contest the validity of the court's aggravators, and the court properly stated the specific reasons why it found each circumstance to be aggravating. The advisory, formerly presumptive, sentence for her Class D felony is eighteen months, and the court could have imposed up to three years (or thirty-six

months). The court found no mitigators and two aggravating circumstances and imposed this twenty-seven month sentence. The court did not abuse its discretion when it sentenced Martin.

Affirmed.

RILEY, J., and BARNES, J., concur.